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c 90 The Public Hospitals Amendment Act, 1972

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CHAPTER 90

An Act to amend The Public Hospitals Act

Assented to June 23rd, 1972
Session Prorogued December 15th, 1972

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Section 1 of *The Public Hospitals Act*, being chapter ^{s. 1, amended} 378 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following clause:

(aa) "Appeal Board" means the Hospital Appeal Board established by this Act.

(2) Clauses *c* and *d* of the said section 1 are repealed. ^{s. 1 (c, d), repealed}

(3) Clause *g* of the said section 1 is repealed and the ^{s. 1 (g), re-enacted} following substituted therefor:

(g) "inspector" means an officer of the Ministry designated under this Act as an inspector.

(4) Section 1 of the said Act is further amended by adding ^{s. 1, amended} thereto the following clause:

(ga) "medical advisory committee" means a committee established under section 42.

(5) Clause *m* of the said section 1 is repealed and the ^{s. 1 (m), re-enacted} following substituted therefor:

(m) "physician" means a legally qualified medical practitioner;

(ma) "provincial aid" means any sum paid to a hospital under this Act or *The Health Insurance Act, 1972*. ^{1972, c. 91}

(6) Clause *p* of the said section 1 is repealed. ^{s. 1 (p), repealed}

2. Section 2 of the said Act is amended by striking out ^{s. 2, amended} "a sanatorium under *The Sanatoria for Consumptives Act* or" in the first and second lines.

s. 3,
amended

3. Section 3 of the said Act is amended by striking out "Commission" in the first line and inserting in lieu thereof "Minister".

s. 4 (1),
amended

4. (1) Subsection 1 of section 4 of the said Act is amended by striking out "Commission" in the third line and inserting in lieu thereof "Minister".

s. 4 (2),
amended

(2) Subsection 2 of the said section 4 is amended by striking out "Commission to the" in the fourth line.

s. 4 (3),
amended

(3) Subsection 3 of the said section 4 is amended by striking out "Commission" in the third line and inserting in lieu thereof "Minister".

s. 4 (4),
amended

(4) Subsection 4 of the said section 4 is amended by striking out "Commission" in the fourth line and inserting in lieu thereof "Minister".

s. 4 (5),
amended

(5) Subsection 5 of the said section 4 is amended by striking out "on the recommendation of the Commission" in the third line.

s. 5,
amended

5. Section 5 of the said Act is amended by striking out "Commission" in the first line and inserting in lieu thereof "Minister".

s. 6,
amended

6. Section 6 of the said Act is amended by striking out "Commission" in the first line and inserting in lieu thereof "Minister".

ss. 7, 8,
re-enacted

7. Sections 7 and 8 of the said Act are repealed and the following substituted therefor:

Powers

7. Every hospital has power to carry on its undertaking as may be authorized by any general or special Act under which it was created, established, incorporated or empowered so to do.

Expropriation
R.S.O. 1970,
c. 154

8. Subject to *The Expropriations Act*, a board may expropriate any real property necessary for the purpose of properly conducting the hospital.

s. 9 (1),
re-enacted

8.—(1) Subsection 1 of section 9 of the said Act is repealed and the following substituted therefor:

(1) A hospital shall pass by-laws as prescribed by the ^{By-laws} regulations, subject to the approval of the Minister.

(2) Subsection 2 of the said section 9 is amended by in- ^{s. 9 (2),}serting after "shall" in the first line "pass" and by striking ^{amended}out "Commission" in the second line and inserting in lieu thereof "Minister".

(3) Subsection 3 of the said section 9 is repealed and the ^{s. 9 (3),}following substituted therefor: ^{re-enacted}

(3) No by-law, or amendment to or revision of a by-law, ^{Idem}made under subsection 2 has any force or effect until it is approved by the Lieutenant Governor in Council upon the recommendation of the Minister.

(4) The said section 9 is amended by adding thereto the ^{s. 9,}following subsection: ^{amended}

(11) Notwithstanding *The Corporations Act*, upon the ^{Idem}recommendation of the Minister, the Lieutenant ^{R.S.O. 1970,}Governor in Council may appoint one or more ^{c. 89}provincial hospital representatives to the board of a hospital for a term of office of not more than three years and such provincial hospital representatives shall have all the rights and responsibilities of elected directors.

9. Section 10 of the said Act is repealed and the following ^{s. 10,}substituted therefor: ^{re-enacted}

10. No member of a committee of the medical staff of a ^{Protection}hospital or of the board or Appeal Board or of the ^{from}staff thereof and no witness in a proceeding or in- ^{liability}vestigation before such committee or board is liable for anything done or said in good faith in the course of a meeting, proceeding, investigation or other business of the committee or board.

10. Section 15 of the said Act is repealed and the following ^{s. 15,}substituted therefor: ^{re-enacted}

15. The Minister may designate one or more officers of ^{Inspectors}the Ministry to be inspectors for the purposes of this Act and the regulations.

11. Section 17 of the said Act is repealed and the following ^{s. 17,}substituted therefor: ^{re-enacted}

Admission
of patients

17. Where,

(a) a person has been admitted to a hospital by a physician pursuant to the regulations; and

(b) such person requires the level or type of hospital care for which the hospital is approved by the regulations,

the hospital shall accept such person as a patient.

s. 19 (1),
amended

12.—(1). Subsection 1 of section 19 of the said Act is amended by striking out “in a hospital” in the first line.

s. 19 (2-4),
repealed

(2) Subsections 2, 3 and 4 of the said section 19 are repealed.

ss. 22, 23,
repealed

13. Sections 22 and 23 of the said Act are repealed.

s. 24,
re-enacted

14. Section 24 of the said Act is repealed and the following substituted therefor:

Burial
expenses by
municipality

24. In the event of the death in a hospital of a patient who is an indigent person, or the dependant of an indigent person, the municipality in which he was a resident at the time of his admission shall pay to the hospital any expenses of his burial that it incurs.

ss. 25-31,
repealed

15. Sections 25, 26, 27, 28, 29, 30 and 31 of the said Act are repealed.

s. 32,
amended

16. Section 32 of the said Act is amended by striking out “for treatment of any patient or” in the first and second lines.

s. 33 (1),
amended

17. (1) Subsection 1 of section 33 of the said Act is amended by striking out “treatment of a patient or on payment by it of” in the second and third lines.

s. 33 (2-4),
repealed

(2) Subsections 2, 3 and 4 of the said section 33 are repealed.

s. 34,
amended

18. Section 34 of the said Act is amended by striking out “treatment of a patient or upon payment of any” in the second line.

s. 37,
amended

19. Section 37 of the said Act is amended by striking out “six months” in the fourth line and inserting in lieu thereof “two years”.

s. 38,
repealed

20. Section 38 of the said Act is repealed.

21.—(1) Subsection 1 of section 39 of the said Act is ^{s. 39 (1),} amended by striking out “Upon the recommendation of the Commission to the Minister, the Lieutenant Governor in Council may make such regulations” in the first, second and third lines and inserting in lieu thereof “Subject to the approval of the Lieutenant Governor in Council, the Minister may make such regulations”.

(2) Clause *j* of subsection 1 of the said section 39 is ^{s. 39 (1) (j),} amended by striking out “discipline” in the first line and inserting in lieu thereof “control”.

(3) Subsection 1 of the said section 39 is further amended ^{s. 39 (1),} amended by adding thereto the following clause:

(*ja*) prescribing the organization of the medical staff of a hospital including the composition and duties of admission and discharge committees and other committees of the medical staff.

(4) Clause *o* of subsection 1 of the said section 39 is ^{s. 39 (1) (o),} amended by striking out “Commission” in the first and second lines and inserting in lieu thereof “Ministry”.

(5) Subsection 1 of the said section 39 is further amended ^{s. 39 (1),} amended by adding thereto the following clause:

(*oa*) prescribing the requirements to be satisfied for obtaining a valid consent for any surgical operation, diagnostic procedure or medical treatment, the method of obtaining such consent, the conditions under which such consent may be dispensed with and specifying the age or ages at which and under what conditions a patient may give a valid consent for a surgical operation, diagnostic procedure or medical treatment to be performed on himself.

(6) Clauses *s* and *t* of subsection 1 of the said section 39 ^{s. 39 (1) (s, t),} repealed are repealed.

(7) Subsection 2 of the said section 39 is amended by ^{s. 39 (2),} amended striking out “On the recommendation of the Commission” in the first line.

22. Section 40 of the said Act is repealed and the following ^{s. 40,} re-enacted substituted therefor:

40. Where,

(a) the application of a physician for appointment or reappointment to a medical staff of a hospital

Notice to
College of
disciplinary
action
against
physician

is rejected by reason of his incompetence, negligence or misconduct;

- (b) the privileges of a member of a medical staff of a hospital are restricted or cancelled by reason of his incompetence, negligence or misconduct; or
- (c) a physician voluntarily or involuntarily resigns from a medical staff of a hospital during the course of an investigation into his competence, negligence or conduct,

the administrator of such hospital shall prepare and forward a detailed report to The College of Physicians and Surgeons of Ontario.

ss. 42-50,
enacted

23. The said Act is amended by adding thereto the following sections:

Medical
advisory
committee

- 42.—(1)** Every board shall establish a medical advisory committee composed of such elected and appointed members of the medical staff as are prescribed by the regulations.

Duties

- (2) The medical advisory committee shall consider and make recommendations to the board respecting any matter referred to it under section 44 and perform such other duties as are assigned to it by or under this or any other Act or by the board.

Powers of
board re
medical
staff

- 43.** The board may,

- (a) appoint physicians to a group of the medical staff of the hospital established by the by-laws;
- (b) determine the hospital privileges to be attached to the appointment of a member of the staff; and
- (c) revoke or suspend the appointment of or refuse to reappoint a member of the medical staff.

Application
for medical
staff
appointment,
hospital
privileges,
etc.

- 44.—(1)** Every physician is entitled to apply for an appointment or a reappointment to any group of the medical staff of a hospital established by its by-laws or for a change in hospital privileges and, upon receipt of a written request, an administrator shall supply an appropriate application form.

- (2) Every physician appointed to the medical staff of a hospital shall be appointed for a period of not more than one year. ^{Term of appointment}
- (3) Each application shall be submitted to the administrator who shall immediately refer such application to the medical advisory committee. ^{Idem}
- (4) Each application shall be considered by the medical advisory committee which shall make a recommendation thereon in writing to the board within sixty days from the date of the application. ^{Recommendation of medical advisory committee}
- (5) Notwithstanding subsection 4, a medical advisory committee may make its recommendation later than sixty days after the date of the application if, prior to the expiry of the sixty day period, it indicates in writing to the board and the applicant that a final recommendation cannot yet be made and gives written reasons therefor. ^{Idem}
- (6) The medical advisory committee shall give written notice to the applicant and the board of its recommendation. ^{Notice of recommendation}
- (7) A notice under subsection 6 shall inform the applicant that he is entitled to, ^{Idem}
- (a) written reasons for the recommendation if a request is received by the medical advisory committee within seven days of the receipt by the applicant of a notice of the recommendation; and
 - (b) a hearing before the board if a written request is received by the board and the medical advisory committee within seven days of the receipt by the applicant of the written reasons under clause a,

and he may so require such reasons and hearing.

45. Where the applicant does not require a hearing by the board in accordance with subsection 7 of section 44, the board may implement the recommendation of the medical advisory committee. ^{Where no hearing required}
- 46.—(1) Where an applicant requires a hearing by the board in accordance with subsection 7 of section 44, the board shall appoint a time for and hold the ^{Powers of board where hearing}

hearing and shall decide the matter in the exercise of its powers under clause *a* or *b* of section 43.

Parties

- (2) The applicant or member, the medical advisory committee and such other persons as the board may specify are parties to proceedings before the board under this section.

Continuation of appointment pending re-appointment

- (3) Where, within the time prescribed therefor, a member has applied for reappointment, his appointment shall be deemed to continue,

(a) until the reappointment is granted; or

(b) where he is served with notice that the board refuses to grant the reappointment, until the time for giving notice requiring a hearing by the Appeal Board has expired and, where a hearing is required, until the decision of the Appeal Board has become final.

Members holding hearing not to have taken part in investigation, etc.

- (4) Members of the board holding a hearing shall not have taken part in any investigation or consideration of the subject-matter of the hearing before the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Notice of hearing

- (5) Where a hearing by the board is required, the person requiring the hearing shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Findings of fact

- (6) The findings of fact of the board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of *The Statutory Powers Procedure Act, 1971*.

1971, c. 47

Only members at hearing to participate in decision

- (7) No member of the board shall participate in a decision of the board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except

with the consent of the parties, no decision of the board shall be given unless all members so present participate in the decision.

- (8) Notwithstanding any limitation of time for the giving of any notice requiring a hearing by the board fixed by or under any Act, and where it is satisfied that there are *prima facie* grounds for granting relief and that there are reasonable grounds for applying for the extension, the board may extend the time for giving the notice either before or after expiration of the time so limited, and may give such directions as it considers proper consequent upon such extension. Extension of time for giving notice

47. (1) The Hospital Appeal Board is established and shall be composed of five members appointed by the Lieutenant Governor in Council, one of whom shall be designated by the Lieutenant Governor in Council as chairman. Hospital Appeal Board established

- (2) The Appeal Board shall be composed of two members who shall be physicians, one member of the legal profession or judiciary and two members representing the public interest, one of whom is a member of a board. Members of Appeal Board

- (3) No employee of the Government of Ontario or of any agency of the Crown shall be appointed a member of the Appeal Board. Membership restriction

- (4) Three members of the Appeal Board constitute a quorum. Quorum

- (5) The members of the Appeal Board shall be paid such remuneration for their services as the Lieutenant Governor in Council determines. Remuneration

- 48.—(1) Any applicant for appointment to or member of the medical staff or who was a party to a proceeding before the board and who is affected by, Reasons and appeal

(a) a decision revoking or suspending his appointment or refusing to reappoint him under clause c of section 43; or

(b) a decision cancelling, suspending or substantially altering his hospital privileges under section 41 or the by-laws,

is entitled to,

(c) written reasons for the decision if a request is received by the board, person or body making the decision within seven days of the receipt by the party or member of a notice of the decision; and

(d) a hearing before the Appeal Board if a written request is received by the Appeal Board and the board, person or body making the decision within seven days of the receipt by the party or member of written reasons under clause a.

Procedure
at hearing

(2) Section 46 applies to a hearing before the Appeal Board in the same manner as if the party or member were an applicant entitled to a hearing before a board under section 44.

Parties

(3) The board and person mentioned in subsection 1 and such other persons as the Appeal Board may specify are parties to proceedings before the Appeal Board under this section.

Recording of
evidence

(4) Oral evidence taken before the Appeal Board at a hearing shall be recorded and, if so required, copies of a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Powers of
Appeal Board

(5) After a hearing, the Appeal Board may by order confirm the decision appealed from or direct the board or other person or body making the decision appealed from to take such action as the Appeal Board considers ought to be taken in accordance with this Act, the regulations and the by-laws, and for such purposes may substitute its opinion for that of the board, person or body making the decision appealed from.

Referral of
matters to
professional
organization
for report

(6) The Appeal Board may at any time during a hearing and prior to rendering a decision refer any matter to any professional organization for the purpose of obtaining expert assistance or a formal report.

Service of
notice

49. Service of a notice under sections 44, 46 and 48 may be made personally or by registered mail addressed to the person to be served at his last known address and, where the notice is served by registered mail, it shall be deemed that the notice was served on the third day after the day of mailing unless the person to be served establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive it until a later date.

50.—(1) Any party to proceedings before the Appeal Board may appeal from its decision to the Supreme Court in accordance with the rules of court. ^{Appeal from decision of Appeal Board}

(2) Where any party appeals from a decision of the Appeal Board, the Appeal Board shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision was made, which, together with the transcript of the evidence if it is not part of the Appeal Board's record, shall constitute the record in the appeal. ^{Record to be filed in court}

(3) An appeal under this section may be made on questions of law or fact or both and the court may exercise all the powers of the Appeal Board, and for such purpose the court may substitute its opinion for that of the Appeal Board or board or other person or body authorized to make the decision appealed from, or the court may refer the matter back to the Appeal Board for rehearing, in whole or in part, in accordance with such directions as the court considers proper. ^{Powers of court on appeal}

24.—(1) This Act, except sections 1 to 21, comes into force on the day it receives Royal Assent. ^{Commencement}

(2) Sections 1 to 21 shall be deemed to have come into force on the 1st day of April, 1972. ^{Idem}

25. This Act may be cited as *The Public Hospitals Amendment Act, 1972*. ^{Short title}

